

**Arizona Department of Environmental Quality UST Program
Release Reporting & Corrective Action Guidance**

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SECTION 9: APPEALS

9.1 INFORMAL APPEAL PROCESS

Pursuant to A.R.S. § 49-1091(C), a person who undertakes corrective action pursuant to A.R.S. § 49-1052 subsection I, or an owner or operator, has 30 days to request an informal appeal after receipt of a department correspondence identifying an interim decision or determination. Interim decisions are those decisions identified in A.R.S. § 49-1091 subsections A and G, which include department approvals, disapprovals or notices of deficiency of SCRs, CAPs, work plans and case closure requests. This also includes department determinations on owner or operator status, allocation of liability and determinations or confirmations of releases.

The informal appeal must be in writing, identify the portions of the interim decision or determination that are the subject of the disagreement, and explain the basis of the disagreement. The informal appeal may be filed using the form provided in Appendix C. As part of the informal appeal, a meeting with the department may be requested to attempt to resolve the disagreement.

If a meeting is requested, the department requests the submittal of a written agenda prior to the meeting. The agenda should contain the following items:

- the purpose of the meeting;
- a list of the specific topics to be covered during the meeting; and
- the names of the participants.

If the owner, operator, or person undertaking corrective action pursuant to A.R.S. §49-1052(I) is not going to attend the meeting, then that person should designate an authorized representative in a signed written statement submitted to the department prior to the meeting.

If an informal appeal is filed, then the department will review its interim decision or determination and issue a final decision or determination. If the department does not issue a final decision or determination within 45 days after receiving the informal appeal, or within 15 days after the meeting described above (whichever date is sooner) then the department interim decision or determination becomes the final decision or determination [see A.R.S. § 49-1091(D)].

A final decision or determination made within the context of the informal appeals

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process is a contested case under A.R.S. § 41-1001(4) and is administratively appealable before the Office of Administrative Hearings (OAH), pursuant to A.R.S. § 41-1092 through § 41-1092.12.

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9.2 FORMAL APPEAL PROCESS

Once a decision or determination has become a final department decision or determination under A.R.S. §49-1091, that decision or determination is a contested case under A.R.S. § 41-1001(4). Contested cases under A.R.S. §41-1001(4) are administratively appealable before the OAH.

To obtain an administrative hearing on the final decision or determination, a Notice of Appeal must be filed with the department within thirty (30) days after receiving the final department decision or determination. The department may choose to accept a Notice of Appeal filed after the 30 day period if good cause is demonstrated [see A.R.S. 41-1092.03(C)]. The Notice of Appeal must contain all of the following pursuant to A.R.S. § 41-1092.03(B):

- Your name and mailing address. The department must be notified of any change in your address within five (5) days after the change (see A.R.S. § 41-1092.04).
- Identification of your status as a UST owner, UST operator, or person voluntarily performing a corrective action under A.R.S. § 49-1052(I).
- Identification of the final decision or determination of the department that is the subject of your appeal.
- A concise statement of the reasons for your appeal.

The department will notify OAH of the appeal by filing with:

Hearing Administrator
ADEQ Office of the Administrative Counsel
3033 North Central Avenue, M0836A
Phoenix, Arizona 85012

The Notice of Appeal to be filed with the department, and the notification of the appeal to be filed with the Hearing Administrator, must be served by either certified mail (return receipt requested) or by personal delivery .

In addition, the department requests that a copy of the Notice of Appeal be sent via U.S. Mail to:

Office of the Attorney General
Environmental Enforcement Section Administrative Appeals Desk
1275 West Washington Street, Phoenix
Arizona 85007

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An administrative hearing will be held within sixty (60) days after the department submits the hearing request to the OAH. The OAH will conduct the hearing and will make a recommendation to the Director of ADEQ which can be upheld, overturned or modified.

If a hearing is requested which requires the participation of the UST technical appeals panel pursuant to A.R.S. § 49-1093(D), the final decision or determination which is the subject of the appeal must have undergone the informal appeal process.